

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

US EPA RECORDS CENTER REGION 5



506901

File No. 4-80-469

United States of America,

Plaintiff,

and

State of Minnesota, by its  
Attorney General Warren  
Spannaus, its Department of  
Health, and its Pollution  
Control Agency,

Plaintiff-Intervenor,

vs.

Reilly Tar & Chemical Corp.;  
Housing and Redevelopment  
Authority of St. Louis Park;  
Oak Park Village Associates;  
Rustic Oaks Condominium, Inc.;  
and Philips Investment Co.,

Defendants,

and

City of St. Louis Park,

Plaintiff-Intervenor,

vs.

Reilly Tar & Chemical  
Corporation,

Defendant.

MEMORANDUM OF LAW IN SUPPORT  
OF INTERVENTION BY  
THE CITY OF ST. LOUIS PARK

I.

INTRODUCTION

The City of St. Louis Park (hereafter City) moves to  
intervene in this action to seek redress for the imminent threat.

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to the health of its residents arising from the contamination of its underground waters by Reilly Tar & Chemical Corporation. It also seeks redress for the costs that contamination has and will cause the City to suffer. The City seeks to prosecute one action before this Court where all parties may be joined.

The City is entitled to intervene in this action as a matter of right pursuant to Rules 24(a)(2) and 24(a)(1) of the Federal Rules of Civil Procedure and pursuant to the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6972(b)(2). Alternatively, the City requests leave to intervene pursuant to Rule 24(b) of the Federal Rules of Civil Procedure to promote judicial efficiency and to protect the City's interest in the subject matter of this action. The claims of the City present common questions of law and fact with the claims of the United States of America and the State of Minnesota.

## II.

### PROCEDURAL HISTORY

The City and the State of Minnesota, through its Pollution Control Agency originally brought suit against Reilly Tar & Chemical Corporation in October, 1970. That original action sought relief for surface water and air pollution. Thereafter, it was dismissed by the City alone upon the termination of operations by Reilly Tar and the purchase of the property by the City. That termination of operations and purchase resolved the air and surface water pollution caused by the creosoting operations of Reilly Tar.

Subsequent studies of the Minnesota Department of Health revealed for the first time carcinogenic contamination of the underground waters as a result of the Reilly Tar operations. That discovery led to further study and to the amendment by the State of

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Minnesota of its complaint in the original action. The amended complaint alleged the separate and distinct claims arising from this carcinogenic contamination of the underground waters.

The District Court of Minnesota granted that motion to amend the complaint by Order dated September 11, 1978. The Minnesota District Court also granted by that Order the motion of the City to intervene as a party plaintiff to assert its own claims arising from the underground water contamination. Intervention was granted as a matter of right because of the City's responsibility to protect the interests of its citizens. Permissive intervention was also found to be proper because the City's claims presented questions of law and fact in common with the amended claims of the State of Minnesota.

This federal action seeks relief for the same carcinogenic contamination. The claims of the United States and the claims of the City are based upon the same facts. The City seeks to have all of the interested parties before a single court for resolution of the common questions of law and fact. It seeks to be a party to protect its separate interests arising from its duty to its citizens to provide drinking water and arising from the costs it has incurred and will continue to incur because of the presence of the contamination within its borders.

### III.

THE CITY IS ENTITLED TO INTERVENE AS  
A MATTER OF RIGHT UNDER FEDERAL RULE  
OF CIVIL PROCEDURE 24(a)(2)

Intervention must be granted as a matter of right under Federal Rule of Civil Procedure 24(a)(2) when:

[T]he applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the

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disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

The City's application for intervention clearly meets the requirements of the Rule.

A.

The City Has A Direct Interest  
In The Property Which Is The  
Subject Of This Action

This action arises because of the carcinogenic contamination of underground waters. Those waters are used by the City to provide drinking water to its residents. Because of the contamination, some of its wells have been closed and the City faces the prospect of continuing water treatment. The City's concern for the drinking water of its residents is a direct interest in the subject matter of the action.

In addition, the City has incurred and will incur special damage because the contamination is within its borders. Residential development of the land once owned by Reilly Tar has presented special costs to ensure the contamination was not thereby aggravated. Some planned development has been permanently delayed pending the final remedy. Also, road construction has been delayed and additional costs have been incurred because of the contamination.

The duty to provide clean drinking water to its residents and the special costs incurred clearly give the City an interest in this action sufficient to meet the test of Rule 24(a)(2).

B.

The Disposition Of This Action May  
Impair Or Impede The City's Ability  
To Protect Its Interest

To determine whether the City's ability to protect its interests may be impaired, the Court need only consider whether the

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City's absence may put it at a practical disadvantage in protecting those interests. 7A Wright & Miller, Federal Practice and Procedure § 1908 at 515. Clearly, it will. This action will determine the timing, the nature, and the extent of the remedial efforts to remedy the carcinogenic contamination. The City's interest to provide clean drinking water to its residents will be litigated before this Court. The United States will be the predominant party because of its greater expertise and resources. To be affected by this action but not a party to it is a harm to be remedied by granting intervention.

C.

The Interests Of The City May Not  
Be Adequately Represented By The  
Existing Parties To The Action

The burden of showing inadequate representation "should be treated as minimal." Trabovich v. United Mine Workers, 404 U.S. 528, 538 n.10 (1972); United States Postal Service v. Brennan, 579 F.2d 188, 191 (2d Cir. 1978). All that need be shown is that representation may be inadequate.

Although the City shares the interest of the United States and the State of Minnesota to assure clean drinking water, it has additional specific interests that must be represented. The City's special interests stem from its duty to supply drinking water to its residents. It has a special proprietary interest as the supplier of that water. It also has the special proprietary interest as the governmental entity responsible for the development and use of property affected by the contamination. The City is the party most directly affected by this contamination within its borders and seeks to represent its interests.

IV.

THE CITY IS ENTITLED TO INTERVENE AS A  
MATTER OF RIGHT UNDER FEDERAL RULE OF  
CIVIL PROCEDURE 24(a)(1) AND THE FEDERAL  
RESOURCE CONSERVATION AND RECOVERY ACT

Federal Rule of Civil Procedure 24(a)(1) provides for intervention by right "when a Statute of the United States confers an unconditional right to intervene . . .". The City has a statutory right to intervene under RCRA, 42 U.S.C. § 6972(b)(2).

That statute provides that "any person may intervene as a matter of right" when the United States has commenced an action in a court of the United States "to require compliance with any permit, standard, regulation, condition, requirement, or order" under RCRA. The United States has commenced such an action pursuant to RCRA, 42 U.S.C. § 6973. Section 6973 provides a means of immediate action in cases where noncompliance with RCRA's solid and hazardous waste standards, regulations, and requirements poses an imminent and substantial endangerment to health or the environment.

Because of the City's interest in the abatement and remedy of the harm caused by Reilly Tar's disposal of hazardous waste within its borders, it requests leave to intervene as of right under Rule 24(a)(1) and 42 U.S.C. § 6972(b)(2).

V.

PERMISSIVE INTERVENTION BY THE  
CITY IS CLEARLY WARRANTED

Alternatively, the City moves to intervene pursuant to Rule 24(b)(2), F.R.C.P. Permissive intervention under that Rule may be granted "when an applicant's claim or defense and the main action have a question of law or fact in common . . . : In exercising its discretion the Court shall consider whether the

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intervention will unduly delay or prejudice the adjudication of the rights of the original parties."

The City's motion clearly meets the requirement of a question of law or fact in common with the main action. The factual claims of the City are nearly identical to those of the United States. The factual claims of the United States and of the City each involve the operations of Reilly Tar in St. Louis Park, and the resulting underground water contamination. The circumstance presents a clear case for intervention. As stated in 3B Moore's Federal Practice, ¶ 24.10[2] at 24-357,

The most obvious case for permissive intervention, of course, is the situation where the intervenor has a claim against the defendant similar to or identical with that asserted by the plaintiff.

The City's intervention will not unduly delay or prejudice the adjudication of the rights of the United States. The City's claims are not in conflict with those of the United States and they depend for their proof on the same facts.

Moreover, the City's intervention in this action will avoid any prejudice to the adjudication of Reilly Tar's rights. Intervention of the City, along with the State, will place all of the parties before a single Court for a single trial. The resulting efficiency will benefit all of the parties including defendant Reilly Tar.

Because the City's factual and legal claims are similar to those of the United States and because the City's intervention will assure the more efficient adjudication of the rights of the original parties rather than delay such adjudication, the Court should permit the City to intervene in this action.

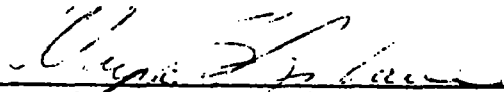
VI.


CONCLUSION

Because the City's application for intervention meets all of the requirements of Rules 24(a)(2), 24(a)(1) and 24(b), it requests to be granted intervention in this action.

Dated: September 23, 1980.

Respectfully submitted,

  
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